

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE**

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SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

LBRY, INC.,

Defendant.

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Civil Action No. 21-cv-00260-PB

**MOTION TO STRIKE OR PRECLUDE USE  
OF AMENDED REPORT OF LBRY’S EXPERT**

The Commission moves to strike or preclude LBRY’s use of the Amended Report of its expert, Dr. Boris Richard. LBRY served the Amended Report to the Commission a full month after the deadline for the supplementation of reports agreed to by the parties (and the close of discovery), and three business days before summary judgment briefs were due. Even if LBRY had served the Amended Report before the supplementation deadline, it does not qualify as a “supplement.” The Amended Report is a new analysis with new methods and new data, all of which was available months before LBRY served Richard’s original report. LBRY is not trying to supplement Richard’s original report, it is trying to correct the defects in Richard’s report that were exposed in his deposition. Finally, the Amended Report does not make the disclosures required by Fed. R. Civ. P. 26(a)(2)(B).

For all of these reasons (described more fully in the attached memorandum in support) under Fed. R. Civ. P. 26(a)(2)(B) and 37(c)(1), the Amended Report should be struck or LBRY should be precluded from using it in support of its summary judgment motion, in opposition to the Commission’s summary judgment motion, or at trial.

Dated: June 8, 2022

Respectfully submitted,

**SECURITIES AND EXCHANGE  
COMMISSION**

By its Attorneys,

/s/ Marc Jones

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**RULE 7.1 CERTIFICATION**

I certify that I attempted in good faith to obtain concurrence from Defendant on the relief sought here, but was unable to do so.

/s/ Marc Jones

Marc Jones

**CERTIFICATE OF SERVICE**

I hereby certify that, on June 8, 2022, I caused true and correct copies of the foregoing to be served on counsel of record for all parties that have appeared to date through the Court's CM/ECF system.

/s/ Marc Jones

Marc Jones